IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Gautam Chand Jain. Versus RIICO Ltd. & Anr.

S.B. Civil Writ Petition No. 7472/2006

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Date of Order: May 09, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Dr. P.S. Bhati, for the petitioner.
Mr. Vinit Kumar Mathur, for the respondents.

BY THE COURT:
Reportable.

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the order Annx.9 dated 2-5-2005 and Annx.10 dated 2-12-2006.

The facts and circumstances giving rise to the instant writ petition are that the petitioner was initially appointed on the post of Assistant Site Engineer with the respondents on 5.11.1977 and since then he has been serving with the respondents having absolutely unblemished service career as according to the petitioner, during his whole service tenure for the last thirty years, he had never been served with any charge-sheet or imposed any minor or major penalty. The petitioner has been promoted to the post of senior Regional Manager by the respondents in the year 2001. While the petitioner was

discharging the duties and functioning as the Senior Regional Manager with the respondents at Jodhpur, he was issued with a memorandum of charges (Annx.1) on 13-11-2002 under rule 11 (B) of the Rajasthan State Industrial Development and Investment Corporation Limited Employees (Classification, Disciplinary Action Act & Appeal) Rules, 1979 (for short, "the Rules of 1979" hereinafter). The memorandum of charges Annx.1 contains as many as four charges, which read as under:-

> **"Charge No.(1):** That Shri G.C. Jain while functioning as Regional Manager in Jodhpur Unit allowed compounding of unauthorised structure measuring 620.57 sq. mtr for commercial purpose, in front set back (southern side) of industrial plot No.27-A allotted to M/s Kamla Industries at Light Industrial Area, Jodhpur, at concessional rates on the basis of Circular No.IPI/P-6/C/111 dated 21-11-2000. No commercial activity was being carried out in the plot prior to 31-10-2000. The unauthorised construction compo9unded by Shri Jain was being used for only industrial purposes as on the above date. Moreover, unauthorised construction in front set back considered for compounding by Shri Jain for commercial purposes did not exist at site as per the reports dated 3-4-2000, 9-8-2000 and 25-9-2000. The unauthorised construction in question is said to have been demolished just after it was compounded as per site report dated 30-10-2001. The land measuring 620.57 sq. mtr was thus converted for commercial purposes by Shri Jain and new construction for commercial purpose was allowed in front set back on the basis of Circular No.IPI/P-6/2/C/111 dated 21-11-2000.
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> It was the duty of Shri Jain to recover the conversion charges at three times the prevailing industrial rate from the party as per office order No.IPI/P-6/2k/111 dated 21-11-2000. But he did not recover the same from the party.

The aforesaid act of the said Shri Jain tantamounts to willful flouting of the prevailing policy of the Corporation and misrepresentation of facts for extending undue favour to the party thereby causing loss to the Corporation. The aforesaid irregularities committed by Shri Jain caused pecuniary loss of Rs.7,44,684/- to the corporation. He is also responsible of negligent attitude towards the discharge of his duties for which disciplinary action is required against him under RIICO Empoyees (Classification, Disciplinary Act & Appeal) Rules, 1979.

Charge No.2: That Shri G.C. Jain while functioning as Regional Manager in Jodhpur Unit allowed compounding of unauthorised structure measuring 1070.21 sq. mtr for commercial purpose in front set back of industrial plot No.27 allotted to M/s Mool Chand Sujan Mal & Company, Light Industrial Area, Jodhpur, at concessional rates on the basis of Circular No. IPI/P-6/2/C/111 dated 21-11-2000. No commercial activity was being carried out in the plot prior to 31-10-2000. The unauthorised construction compounded by Shri Jain was being used for only industrial purposes as on the above date. Moreover, unauthorised construction in front set back considered for compounding by Shri Jain for commercial purposes did not exist at site as per site report dated 27-9-2000. The land measuring 1070.21 sq. mtr was thus converted for commercial purposes by Shri Jain and new construction for commercial purposes was allowed in front set back on the basis of Circular No.IPI/P-6/2/C/111 dated 21-11-2000.

It was the duty of Shri Jain to recover the conversion charges at three times the prevailing industrial rate from the party as per office order No.IPI/P-6/2k/111 dated 21-11-2000. But he did not recover the same from the party.

The aforesaid act of the said Shri Jain tantamounts to willful flouting of the prevailing policy of the Corporation and misrepresentation of facts for extending undue favour to the party thereby causing loss to the Corporation. The aforesaid irregularities

committed by Shri Jain caused pecuniary loss of Rs.12,84,252/ to the corporation. He is also responsible of negligent attitude towards the discharge of his duties for which disciplinary action is required against him under RIICO Empoyees (Classification, Disciplinary Act & Appeal) Rules, 1979.

Charge No.3: That Shri G.C. Jain while functioning as Regional Manager in Jodhpur Unit office deliberately approved conversion of industrial land of M/s. Kamla Industries, Plot No.27-A, Light Industrial Area, Jodhpur at concessional rates as follows:-

Land in Sq. mts.	Purpose
1326.61	Residential
292.64	Residential
292.64	Residential
201.60	Residential
1861.72	Residential
620.57	Commercial

Shri Jain was required to approve conversion of the land and sub-division plan prescribing set backs while maintaining front set backs as per the original layout plan approved by the Director of Industries. Shri Jain deliberately did not prescribe set backs with malafide intention and did not comply with the directions given by the Director of Industries. Moreover, instructions contained in office order No.IPI/P-6/25 dated 23-7-1998 wherein set backs norms were prescribed were not complied with. The aforesaid act of Shri Jain tantamounts to violation of set back and town planning norms. Thus Shri Jain extended undue favour to the party while willfully flouting the policy of observing town planning and set back norms.

The aforesaid act of Shri Jain indicates callous, malafide and negligent attitude towards discharging his duties. The act of Shri Jain also caused a loss of prestige to the Corporation for which disciplinary action is required against him under RIICO Employees (Classification, Disciplinary Action &

Appeal) Rules, 1979.

Charge No.4: That Shri G.C. Jain while functioning as Regional Manager in Jodhpur Unit office deliberately approved conversion of industrial land of M/s. Mool Chand Sujan Mal & Company, Plot No.27, Light Industrial Area, Jodhpur at concessional rates as follows:-

Land in Sq. mts.	Purpose	Date
1755.91	Residential	27.11.2000
195.09	Residential	19.12.2000
292.64	Residential	20.12.2000
1928.60	Residential	24.12.2000
167.52	Commercial	24.12.2000
1070.21	Commercial	24.12.2000

Shri Jain was required to approve conversion of the land and sub-division plan prescribing set backs while maintaining front set backs as per the original layout plan approved by the Director of Industries. Shri Jain deliberately did not prescribe set backs with malafide intention and did not comply with the directions given by the Director of Industries. Moreover, instructions contained in office order No.IPI/P-6/25 dated 23-7-1998 wherein set backs norms were prescribed were not complied with. The aforesaid act of Shri Jain tantamounts to violation of set back and town planning norms. Thus Shri Jain extended undue favour to the party while willfully flouting the policy of observing town planning and set back norms.

The aforesaid act of Shri Jain indicates callous, malafide and negligent attitude towards discharging his duties. The act of Shri Jain also caused a loss of prestige to the Corporation for which disciplinary action is required against him under RIICO Employees (Classification, Disciplinary Action & Appeal) Rules, 1979.

The petitioner filed a detailed reply to memorandum of charge vide Annx.4 denying the charges levelled against him

and came with the specific case that what the petitioner has done is in conformity with the Office Order No.IPI/P-6/94 dated 21-11-2000 (Annx.5) and, therefore, whatever action has been done by the petitioner, is strictly in accordance with the Office Order (IDC/2000-2001/6/U/34 No.IPI/P-6/94 dated 21-11-2000 (Annx.5). It has also been stated in the reply to the memorandum of charges that no loss has occasioned to the respondents by the acts of the petitioner, on the contrary, the amounts charged by the petitioner from the two industrial units referred in the memorandum of charges is much more than the prescribed rates of penalties. Vide order Annx.9 dated 5-4-2006, the Inquiry Officer gave its conclusion on the inquiry and held that all the four charges have been found proved against the petitioner. By the order Annx.10 dated 2-12-2006, the respondent authority imposed the penalty of demotion upon the petitioner, i.e. from the post of Senior Regional Manager to Regional Manager. Hence this writ petition.

A reply to the writ petition has been filed by the respondents taking the stand that an alternative remedy of appeal has been provided and without exhausting the alternative remedy of appeal, the instant writ petition has been filed.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner that the alternative remedy of appeal is not an

efficacious remedy in the facts and circumstances of the instant case for the reason that the Appellate Authority is the Working Committee, which is headed by the Chairman of the respondent Corporation and the impugned order Annx.10 has been passed by the Chairman of the respondent Corporation and , therefore, the Authority which has passed the order impugned in this writ petition, cannot hear the appeal against his own order and hearing the appeal against its own order would be nothing more than sitting in appeal against his own order by the Appellate Authority, which is against the well settled legal principle that no person can be Judge of his own cause. Learned counsel further submits that rule 4 of the Rules of 1979 provides Definitions and sub-rule (iv) of rule 4 defines the expression "Chairman" which provides that "Chairman" means the Chairman of the Board of Directors of the Corporation appointed in accordance with Article 94 of the Association of the Corporation. Rule 14 of the Rules of 1979 pertains to appeal and provides as under:-

> "14. Appeal.- (a) An employee who has been awarded punishment has a right to appeal through proper channel against the punishment, to the appellate authority within a period of 60 days from the date, on which the appellant receives the order to be appealed against.
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> (b) The appeal shall be in a proper language and complete in itself, containing all material, statement, and arguments on which the appellant relies.
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> (c) An appeal can be with-held with due intimation to the appellant, if

(i)it is time barred;
(ii) It is not made in accordance with the rules;
(iii)It is repetition of an appeal already decided and contains no new facts and circumstances.

(d)No appeal shall lie against the order of the Board. It's decision shall be final.

Notes: Only under special circumstances and on valid grounds the period of limitation can be extended by 30 days by the Appellate Authority (for 30 days)."

Annxure-I , Appendix-7B under rule 6 of the Rules of 1979 pertains to Appointing Authority/ Disciplinary Authority in case of Employees posted in Infra Unit Offices, according to which for the post held by the petitioner, the Appointing Authority is the Chairman, the Disciplinary Authority for imposing minor penalty is the Managing Director, the Disciplinary Authority for imposing major penalty is the Chairman and the Review/Appellate Authority is the Working Committee. As per the definition of rule 4 (iii) of the Rules of 1979, "Working Committee" means the Committee of Board of Directors constituted by the Board of Directors of the Corporation and as per the definition of "Chairman" given in rule 4 (iv) of the said Rules of 1979, the "Chairman" means the Chairman of the Board of Directors of the Corporation appointed in accordance with Article 94 of the Article of Association of the Corporation. In the instant case, the Disciplinary Authority for imposing major

penalty is the Chairman who passed the impugned order Annx.10 and the Appeal/Review against the order of the Chairman lies with the Working Committee headed by the Chairman itself, therefore, it cannot be said that in the case of the petitioner, the alternative remedy of appeal is an efficacious in nature as no person can be a judge of his own cause. This fact has not been disputed by the learned counsel for the respondents. Therefore, in my view, though the remedy of appeal is provided under rule 14 of the Rules of 1979, but that alternative remedy would be illusory for the reason that the major penalty has been imposed by the Disciplinary Authority i.e. the Chairman of the Corporation and the Appellate Authority is the Working Committee headed by the Chairman and as such the Chairman , who passed the impugned order Annx.10 cannot be a judge of his own cause. Thus, the preliminary objection raised by the learned counsel for the respondents cannot be accepted.

It is next contended by the learned counsel for the petitioner that the petitioner acted strictly in accordance with the Office Order(IDC/2000-2001/6-U-34) No.IPI/P-6/94 dated 21-11-2000 (Annx.5). Learned counsel further submits that the operative portion of para "L" of the Office Order (IDC/2000-2001/6-AU) No.IPI/P-6/2k/111 dated 21-11-2000 (Annx.2) has been stayed by the State Government vide order Annx.R/2

dated 21.1.2001 till further orders as admitted by the respondents in their reply. It was further contended that a detailed reply to the memorandum of charge has been filed by the petitioner vide Annx.4, but the Inquiry Officer has not considered and dealt with the reply filed by the petitioner before arriving at the conclusion vide Annx.9 and, therefore, the findings of the Inquriy Officer, as also those of the Disciplinary Authority are without any foundation, erroneous and contrary to the facts on record. Learned counsel further submits that the Highest Body of the respondent Corporation, i.e. the State Government, considered the representation of one Paras Raj Kothari and vide Communication No.U (15)-2 (1-39) 94 101 dated 17-4-2001 (Annx.R/1) stated as under:-

> "In this connection we are to inform you that the Sr. Regional Manager, RIICO, Jodhpur has granted permission for sub-division of industrial plot along with its conversion for residential and commercial purposes. He has also regularised unauthorised constructin for commercial purpose on payment of requisite premium/compounding fee as per policy decided by the Corporation."

Thus, what has been done by the petitioner was identical to that of by Paras Raj Kothari which, as noticed above. has been found to be in conformity with the various Office Orders issued by the respondents in view of the State Government's Order Annx.R/1. The Deputy Secretary, Government of Rajasthan, Industries (Gr.I) Department, Jaipur,

vide its letter dated 17-4-2001 has examined the matter and concluded as noticed above vide Annx.R/1 and, therefore, according to the learned counsel, the conclusions arrived at by the Inquiry Officer and the Disciplinary Authority are contrary to the decision arrived at by the State Government vide Annx.R/1. Learned counsel further submits that the allegation of violation of Office Order No. No.IPI/P-6/2k/111 dated 21-11-2000 (Annx.2) is unfounded. Annx.2 deals with allowing conversion of complete allotted or permitted sub-divided industrial plot for commercial and residential activities subject to following the building parameters and bye-laws of the Corporation, on payment of conversion charges at the rate of 3 times and 1.5 times the prevailing industrial rate respectively, whereas the petitioner has not converted any the land of any person but the charges against him is with regard to regularisation and the order Annx.2 does not deal with "regularisation" but it precisely deal with "conversion" and, therefore, the conclusions arrived at by the Inquiry Officer and the Disciplinary Authority that the petitioner violated the office order Annx.2 dated 21-11-2000 is contrary to the charges levelled against him though order Annx.2 so far it relates to Clause "L" has been stayed by the State Government vide Annx.R/2.

Learned counsel for the respondents supported the action of the respondents.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

Charges No.1 and 2 are common, as also the charges No.3 and 4 are common. Charges No.1 and 2 against the petitioner are that while functioning as the Regional Manager of RIICO at Jodhpur, he has allowed compounding of unauthorised structure for commercial purposes in front set back of industrial plot No.27-A allotted to M/s. Kamla Industries at Light Industrial Area and plot No.27 allotted to M/s. Mool Chand Sujan Mal & Company, Light Industrial Area, Jodhpur on concessional rates based on Circular No.IPI/P-6/2/C/111 dated 21.11.2000, which has been annexed with the writ petition as Annx.2, which deals with allowing conversion of complete allotted or permitted sub-divided industrial plot for commercial and residential activities, subject to following the building parameters and bye-laws of the Corporation, on payment of conversion charges at the rate of 3 times and 1.5 times the prevailing industrial rate respectively.

Now the question to be examined is: whether the petitioner has converted any of the industrial plot allotted or permitted sub-divided industrial plot to M/s. Kamla Industries and M/s. Mool Chand Sujan Mal & Co. From the conclusion arrived at by the Inquiry Officer, it nowhere appears that the petitioner has “converted” any of the plot allotted either to M/s. Kamla Industries or M/s. Mool Chand Sujan Mal & Company.

What the petitioner did is regularisation of unauthorised construction permissible under the Office Order No.IPI/P-6/94 dated 21-11-2000 (Annx.5), which in clear terms provides that regularisation of unauthorised construction in front set backs shall be allowed by charging 3 times for the industrial use, 4.5 times for residential use and 6 times for commercial use. From the statements of witnesses recorded by the Inquiry Officer and even from the charges, the case set up by the respondents is that the petitioner "regularised" unauthorised construction in front set-backs whereas from the evidence available on record, it has been established that the petitioner, while acting in conformity of the Office Order No.IPI/P-6/94 dated 21-11-2000 (Annx.5), regularised the unauthorised constructions by charging 6 times for commercial use and similar act done by Paras Raj Kothari was examined by the State Government and vide order Annx. R/1 dated 17-4-2001 of the Deputy Secretary, Government of Rajasthan, Industries (G-I), the same was found in conformity with and as per policy decision by the Corporation.

So far as the question whether both these plots (Plots No.27-A and 27) were put to commercial use or not, is concerned, there is ample evidence on record that the commercial activities are going-on on both these plots allotted to M/s Kamla Industries and M/s. Mool Chand Sujan Mal & Company. This fact has not been disputed by the respondents

that the petitioner, while regularising the unauthorised constructions in front of set-backs for commercial use, had charges 6 times of the prescribed rates. Charges No.1 and 2, in very specific terms, state that the petitioner has compounded the use of industrial plots for commercial use measuring 620.57 and 1070.21 square metres in violation of the Office Order No. IPI/P-6/2k/111 dated 21-11-2000 (Annx.2). This Office Order deals with conversion of unauthorised constructions, whereas the petitioner has not converted any unauthorised construction, but he has only regularised the same, which is permissible under the Office Order. It appears that the Inquiry Officer has based his findings on the basis of Office Order Annx.2, whereas from the material available on record, it has not been established that the petitioner has "converted" any of the unauthorised construction on the set-backs. The Inquiry Officer, while recording the findings to the effect that charges No.1 and 2 have been proved, based its findings in view of the Office Order Annx.2, which, in my considered opinion, is wholly erroneous to the extent that the Office Order Annx.2 pertains to conversion of unauthorised construction on the industrial plots, whereas even from the statements of the witnesses recorded by the Inquiry Officer and considered by him, there is not even a whisper that the petitioner has ever converted any of the unauthorised construction on the industrial plots. The Inquiry Officer has not

dealt with the issue that the Office Order Annx.5 provides regularisation of unauthorised construction in front of set-backs etc. on charging certain amount of penalty and the petitioner has regularised the same strictly in accordance with the Office Order Annx.5, which has not been gone into by the Inquiry Officer. Thus, the conclusion arrived at by the Inquiry Officer is based contrary to the Office Order Annx.5 and, therefore, is erroneous and as such cannot be sustained.

So far as Charges No.3 and 4 are concerned, these charges relate to violation of the Office Order No. IPI/P/6/25 dated 23-7-1998 (Annx.3), which reads as under:-

> "The infrastructure Development Committee of the Board of Director vide item No.5 of the meeting held on 9th July 1998 have accorded approval for:-
>
> (a) increasing the utility area upto 70% of the total allotted area subject to maintaining the front set backs prescribed for the particular zone and amendment in the set backs of industrial plots in respect of all the industrial areas of the Corporation and transferred industrial areas as per statement placed at Annexure."A"
>
> (b) allowing the utility percentage upto 70% of the total allotted area in the special size plots i.e. more than 10,000 sqm subject to maintaining the front set backs as prescribed in the statement placed at Anexure-B.
>
> (c) amendment in the set-backs of the sub-divided plots subject to maintaining front set backs as prescribed for the particular block.
>
> (d)the prescribed set backs would be applicable to industrial plots with a maximum of two storey buildings, and

> (e) substituting table 1 and table 3 of Rule 20 of RIICO Disposal of Land Rules, 1979 as per the Annexure-'A' and 'B' respectively.”

While holding charges No.3 and 4 as proved, it has not been stated by the Inquiry Officer as to which of the conditions of Annx.3 has been violated by the petitioner. There is not even a whisper in the finding recorded by the Inquiry Officer regarding violation of any of the conditions of Annx.3. The Inquiry Officer straightway, without making any foundation for his satisfaction/conclusion, came to the conclusion that the petitioner has violated the conditions of Annx.3, but which of the condition of Annx.3 has been violated, there is no whisper in the inquiry report. Therefore, the conclusion arrived at by the Inquiry Officer is without any basis and it is based on erroneous consideration of Office Order Annx.3..

More so, even prior to service of memorandum of charges on the petitioner, the operative portion of Office Order Annx.2, on the basis of which the charges have been based, has been stayed by the State Government vide Office Order No. IPI/P-6/2K/1829 dated 29-1-2001 (Annx.R/2). The Inquiry Officer has not taken note of the fact that the matter was considered by the Highest Body of the respondent Corporation and as per Annx.R/1, the action taken by the petitioner was found in conformity with the Office Order Annx.5 as the

regularisation of unauthorised construction was made after charging the requisite amount as prescribed and as such no loss was caused to the respondent Corporation. In these circumstances, the conclusions arrived at by the Inquiry Officer and the Disciplinary Authority are wholly erroneous and contrary to the material on record and as such, the impugned order cannot be sustained in the eye of law and, therefore, the writ petition deserves to succeed.

In this view of the matter, the writ petition is allowed and the impugned order Annx.10 dated 2-12-2006, as also the Inquiry Report Annx.9 dated 2-5-2005, are quashed. There shall be no order as to costs.

(H.R. PANWAR), J.

mcs